HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1200 of 2006

Between:

B. Yugandhar

... Appellant

And

The Principal, Kuppam Engineering College, Kuppam, Chittoor District and another

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri N. Aswarthanarayana

Counsel for respondent No.2: Shri K. Rathanga Pani Reddy, Standing Counsel for Jawaharlal Nehru Technological University

November 10, 2006

Per G.S. Singhvi, CJ

Whether the appellant, who failed to achieve the requirement of

minimum 75% attendance prescribed under the academic regulations framed by Jawaharlal Nehru Technological University, Hyderabad (for short, 'the University'), can seek a direction for being allowed to take examination of 1st semester of the 4th year of B.E. course is the question which arises for determination in this appeal filed against order dated 8-11-2006 passed by the learned Single Judge in Writ Petition No.23298 of 2006.

The appellant took admission in B.E. (Electronics and Communication Engineering) in the year 2003-04 in Kuppam Engineering College, Chittoor (for short, 'the College'). After completing three years of the course, he was admitted to the 4th year. From 26-6-2006 to 15-8-2006, he is said to have suffered from viral fever and, on that account, he could not attend the classes. As a result, he failed achieve the minimum target of 75% attendance. The Principal of the College declined to entertain his candidature for 1st semester examination scheduled to be held in November 2006. The appellant then filed writ petition for issue of a mandamus to the respondents to allow him to appear in the examination. The learned Single Judge dismissed the writ petition by observing that even if the academic committee was to condone the shortage of attendance in aggregate up to 10%, the petitioner (appellant herein) will not be able to fulfill the requirement of minimum 75% attendance necessary for becoming eligible to appear in the examination. In the opinion of the learned Single Judge, the Court cannot issue a mandatory direction to the respondents to act in violation of the statutory regulations.

Shri N.Ashwarthanarayana relied on order dated 27-10-2006 passed by the Division Bench in WAMP No.2354 of 2006 in Writ Appeal No.1125 of 2006 – **K. Siva Sai Kumar Reddy v. The**

Principal, Vagdevi Institute of Technology & Science, Pedasettipalli and another and submitted that interim order in similar terms may be passed in the appellant's case. He further submitted that the appellant could not attend the classes due to reasons beyond his control and, therefore, the Court may sympathetically consider his prayer for being allowed to take the examination.

Shri K. Rathangapani Reddy, learned counsel for the University relied on the judgments of the Supreme Court in **Ashok Kumar Thakur v. University of Himachal Pradesh**[1] and of this Court in **M.S. Chakravarthi v. Principal, Sri Kalahasteeswara Institute of Technology**[2] and argued that the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer. Shri Reddy emphasized that in exercise of the power vested in it under Article 226 of the Constitution of India read with Clause 15 of the Letters Patent, the High Court cannot direct the University to violate the mandate of the academic regulations framed by the University. He then submitted that the plea of sympathy should not be accepted for passing an order which would compel a public authority i.e. the University to violate the statute.

We have considered the respective submissions. Regulation 5 of the Academic Regulations framed by the University, which has bearing on the decision of this appeal reads as under:

"**5. Attendance.**

i) a student has to put in a minimum of 75% of attendance in aggregate of all the subjects for acquiring credits in the I year and/or each semester thereafter.

ii) Condonation of shortage of attendance in aggregate up to 10% (65% and above and below 75%) in each semester or I year may be granted by the college

academic committee.

iii) A student will not be promoted to the next semester unless he satisfies the attendance requirement of the present semester/I year.

Note:

a) Shortage of attendance below 65% in aggregate shall in no case be condoned.

b) Student whose shortage of attendance is not condoned in any semester/I year are not eligible to take their end examination of that class and their registration shall stand cancelled. They may seek re-admission for that semester/ I year when offered next.

c) Condonation of shortage of attendance as stipulated in 5 (ii) above shall be granted on genuine and valid grounds with supporting evidence.

d) A stipulated fee shall be payable towards condonation of shortage of attendance. "

The above reproduced regulation was interpreted by the Division Bench in **M.S. Chakravarthi** (supra). After noticing the judgment of the Supreme Court in **Ashok Kumar Thakur** (supra), the Division Bench held:

> "Since nobody has power to condone the attendance below 65% therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the Regulations cannot be subject-matter of a mandamus."

I n **Ashok Kumar Thakur** (supra), the Supreme Court unequivocally rejected the plea of sympathy and held:

> "Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not

see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs. "

In view of the aforementioned judgments, it must be held that the Court cannot issue a judicial fiat to the respondents to admit the appellant in I semester examination of the 4th year and thereby violate the mandate of Regulation 5 of the Academic Regulations.

We are further of the view that even if the benefit of Regulation 5 (ii) was to be extended to the appellant, he would not have been able to achieve the requirement of minimum 75% attendance in aggregate. Therefore, the learned Single Judge did not commit any error by refusing to entertain his prayer and we do not see any reason to differ with him.

Adverting to order dated 27-10-2006 passed in the case of **K. Sivasai Kumar Reddy**, we find that the same does support the plea of the appellant. However, we are not inclined to rely on the same for granting relief to the appellant because-

1) that order is interlocutory in character and we are finally disposing of the writ appeal.
2) the stay order was passed by the Court because judgment of the Supreme Court in **Ashok Kumar Thakur** (supra) and of the Division Bench in **M.S. Chakravarthi** (supra) do not appear to have been brought to the notice of the Court. If those judgments had been produced before the Court, there

would have been no occasion for passing an interlocutory order by disregarding the law laid down by the Supreme Court and by overlooking the judgment of the coordinate Bench.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2492 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 10, 2006

svs

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[1] (1973) 2 SCC 298

[2] 2005 (1) ALD 253